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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANDRE D. DAVIDS,

Defendant and Appellant.

B270810

(Los Angeles County
Super. Ct. No. SA086935)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Mark E. Windham, Judge. Affirmed.

Christine M. Aros, under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Lance E. Winters, Senior Assistant Attorney General, Idan
Ivri and Paul S. Thies, Deputy Attorneys General, for Plaintiff and
Respondent.

Andre Davids appeals from the trial court's order sentencing him to the upper term of 11 years for voluntary manslaughter, plus one year for a deadly weapon enhancement. (Pen. Code, §§ 192, subd. (a), 12022, subd. (b)(1).)¹ The trial court imposed the upper term based on the aggravating circumstances of the crime. Davids contends the court abused its discretion in weighing the aggravating and mitigating circumstances, as numerous mitigating factors warranted sentencing him to the middle term of six years. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On March 29, 2014, Davids's sister called police, concerned with the wellbeing of her brother. Police conducted a welfare check of Davids's apartment but left when no one answered. Police received more calls from Davids's sister, so they returned to the apartment and opened the door with assistance from the fire department. Upon entering the apartment, police observed the body of Kurtland Ma, Davids's boyfriend, on the kitchen floor. They searched the apartment and found Davids sitting in a bathtub, covered in blood and holding a knife, a cellphone, and a pill bottle. An officer secured the knife and fire department personnel removed Davids from the tub, where another knife lay, and took him to a hospital to treat wounds to his neck and wrists. Officers returned to the kitchen to discover that Ma had been grotesquely mutilated.

Homicide investigators met Davids at the hospital, and he admitted he had killed Ma. Davids described that he and Ma had been dating for two years before they moved to Los Angeles together. Ma was promiscuous and wanted an open relationship while Davids wanted to be monogamous. On

¹ All further statutory references will be to the Penal Code.

the day Davids killed Ma, they argued because Ma wanted to introduce other men into the relationship. During the argument, Ma told Davids he did not love him, he had been unfaithful, and he wanted to end the relationship. Ma pushed Davids, then grabbed and brandished a kitchen knife. Davids took the knife away and placed it on the kitchen counter. Ma grabbed the knife again, and out of anger Davids reached for a larger knife and used it to stab Ma repeatedly. Davids also used several other knives with which he killed and mutilated Ma. A forensic pathologist employed by the county as a deputy medical examiner testified that many of Ma's injuries were inflicted while he was still alive, and many would have been independently fatal. After Davids killed Ma, he called several people and explained what he had done and said he had taken sleeping pills and inflicted wounds to his own neck and wrists.

Davids explained to investigators that he had not slept much before the incident, and his drug screens returned positive for methamphetamine, benzodiazepines, and marijuana. Davids expressed remorse to investigators and said he understood what he did and no longer wanted to live. Played in court, recorded phone calls from Davids's time in custody reflected his appreciation for the seriousness and violent nature of his crime.

A jury found Davids guilty of voluntary manslaughter and found true the allegation that he personally used a knife. (§§ 192, subd. (a), 12022, subd. (b)(1).) The court sentenced him to the upper term of 11 years, plus one year for the deadly weapon enhancement, for a total of 12 years in state prison.

Davids appealed.

DISCUSSION

Davids contends the trial court abused its discretion when it imposed the upper term of 11 years, as it improperly determined that aggravating factors outweighed mitigating factors.

A defendant convicted of voluntary manslaughter may be sentenced to state prison for three, six, or 11 years. (§ 193, subd. (a).) “When a judgment of imprisonment is to be imposed and the statute specifies three possible terms,” the trial court has broad discretion to tailor the sentence to the particular case by choosing the lower, middle or upper term. (§ 1170, subd. (b).) A trial court “is presumed to have acted to achieve legitimate sentencing objectives,” and its sentencing decision “must be affirmed unless there is a clear showing the sentence choice was arbitrary or irrational.” (*People v. Lamb* (1988) 206 Cal.App.3d 397, 401; accord *People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.)

As directed by the Legislature, the Judicial Council has promulgated rules to guide sentencing choices. (§ 1170, subd. (a)(2), 1170.3; Cal. Rules of Court, rules 4.420, 4.421, 4.433, 4.437.) Rule 4.421 of the California Rules of Court directs the trial court to consider, as pertinent here, whether a crime “involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness” and whether the defendant “was armed with or used a weapon at the time of the commission of the crime.” (Cal. Rules of Court, rule 4.421, subds. (a)(1) & (a)(2).) Rule 4.421 also requires the court to consider whether the defendant “has engaged in violent conduct that indicates a serious danger to society.” (Cal. Rules of Court, rule 4.421, subd. (b)(1).)

Here, Davids severely mutilated and killed Ma using several knives. The crime thus involved great violence and great bodily harm and showed a high degree of callousness and indicated Davids posed a serious danger to society.

Davids argues that because he had no history of violence, he acted under provocation, and he was under the influence of drugs during the crime,

the trial court abused its discretion in declining to impose a middle term of six years. But as he acknowledges, a single aggravating factor suffices to impose an upper term. (*People v. Black* (2007) 41 Cal.4th 799, 813.) Considering Davids's callousness and violence in committing this crime, the trial court acted within its discretion in imposing the upper term.

DISPOSITION

The judgment is affirmed.

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CHANEY, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.